IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.12836, 12837 & 12839 of 2021

A.Ponnuvel ... Petitioner in W.P.No.12836/2021
S.Maheswari ... Petitioner in W.P.No.12837/2021
N.Yuvaraj ... Petitioner in W.P.No.12839/2021

/vs/

1. The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai. ... Respondents in all W.P's.

Writ Petition in W.P.No.12836/2021 is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order of the first respondent dated 26.07.2019 made in G.O.(D) No.133 Commercial Taxes and Regulation (A2) Department and quash the same as illegal and unlawful consequently direct the first respondent to declare the petitioner's probation completed on 24.03.2009 with all service benefits.

Writ Petition in W.P.No.12837/2021 is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order of the first respondent dated 03.10.2016 made in G.O.(D) No.361 Commercial Taxes and Regulation (A2) Department and quash the same as illegal and unlawful consequently direct the first respondent to declare the petitioner's probation completed on 05.04.2009 with all service benefits.

Writ Petition in W.P.No.12839/2021 is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order of the first respondent dated 26.06.2019 made in G.O.(D) No.101 Commercial Taxes and Regulation (A2) Department and quash the same as illegal and unlawful consequently direct the first respondent to declare the petitioner's probation completed on 26.04.2014 with all service benefits.

For Petitioners ... Mr.J.Pooventherarajan
(in all W.P's)

For Respondents ... Ms.K.Vasanthamala
(in all W.P's) Government Advocate (T) for R1&R2

COMMON ORDER

Heard Mr.J.Pooventherarajan, the learned counsel for the petitioners, Ms.K.Vasanthamala, the learned Government Advocate for R1 & R2.

2. The petitioners have filed these writ petitions challenging the impugned order passed by the first respondent and to direct the first respondent to declare their probation with all service benefits.

3. These writ petitions are yet another series of petitions filed on the ground of delay in sending the petitioners to complete the special training at Bhavanisagar and due to which the probation has been declared by giving effect from the date of their passing of the examination of the Bhavanisagar Training.

4. The petitioners were appointed as Junior Assistants between the years 2007 – 2012. According to Rule 32 (a) (1) of the Tamil Nadu Ministerial Service Rules, a person directly appointed as Junior Assistant should undergo probation of two years on duty within continuous period of three years. As per Rule 34 of the said Rules, a person who has been appointed should undergo special training and pass the examinations during the training period. The petitioners in W.P.Nos.12836 & 12837/2021 were sent to Bhavani Sagar Training for a period of 41 days in the year 2016 and the petitioner in W.P.No.12839/2021 was sent to training in the year 2017. Since the petitioners could finish their training in the year 2016 and 2017, their probations have been declared with effect from the years 2016 & 2017.

5. The grievance of the petitioner is that the delay on the part of the respondents in sending the petitioners for Bhavanisagar training should not have any impact on the declaration of their probation from the date of completion of two years of service. Similar issue was brought frequently before this Court by similarly placed persons and judgments have been

given succinctly stating that the delay in deputing training cannot be put against the employee and that should not be considered as an impediment for declaring the probation of the employee.

6. Ms.K.Vasanthamala, the learned counsel for the respondents, submitted that the petitioners have not passed the examination in the special training and hence they are entitled to get promotion only after passing the said examinations and completing the training.

7. There is no disagreement on the point that the petitioners have been sent to training only between the years 2016-2017. In fact in the second attempt, the petitioners have passed the examinations as well. It is understandable if the petitioners were sent for training within the first two years of their probation and during that period they failed to pass the examination. But the petitioners themselves have been sent to training only after a delay of nearly 9 years in the case of those petitioners who have been appointed in the year 2007 and four years in the case of the petitioner who have been appointed in the year 2012.

8. The delay on the part of the respondents to send the petitioners to training cannot be held against them. This is for the obvious reason that the petitioner could have completed their training within a period of two years or within a period of three years, even if they have failed in any of the examinations during that relevant point of time. But such opportunity was not given to the petitioners and that was not due to any fault on their part.

9. As stated already the issue has been dealt in earlier judgment of this Court in W.A. No.248 of 2022 dated 15.02.2022 in which it has been unanimously held that the delay should not be held against the petitioners. The same logic and reasoning is applicable to the facts of the present case also. Hence, I feel the impugned orders passed by the first respondent should be quashed.

10. Accordingly, these Writ Petitions are allowed and the impugned orders passed by the first respondent : (i) dated 26.07.2019, made in G.O.(D) No.133 Commercial Taxes and Regulation (A2) Department, (ii) dated 03.10.2016 made in G.O.(D) No.361 Commercial Taxes and

Regulation (A2) and (iii) dated 26.06.2019 made in G.O.(D) No.101 Commercial Taxes and Regulation (A2) Department are hereby quashed and the first respondent is directed to declare the petitioners' probation completed on 24.03.2009, 05.04.2009 & 26.04.2014 respectively, with all service benefits, within a period of six weeks from the date of receipt of a copy of this order.

28.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
bkn

To:

1. The Principal Secretary to Government,
   Commercial Taxes and Registration Department,
   Fort St. George,
   Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
   Ezhilagam,
   Chepauk,
   Chennai.

R.N.MANJULA ,J.

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